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## Overview of The New Best Interest of the Child Factors

By the Minnesota Child Custody Dialogue Group

After several years of deeply collaborative work by representatives from various factions of family law interests, a number of statutory changes have been made. The most significant of these is the revamp of the “best interest of the child” factors. These changes take effect on August 1, 2015 and represent a thoughtful redirection for family law.

Previously, there were 13 Best Interest Factors to assist in deciding primary physical custody after family dissolution, along with four additional factors if joint custody was sought. The new 12 Best Interest Factors are applicable to all cases between parents, without a presumption for or against sole or joint physical custody. There remains a rebuttable legal presumption for joint legal custody in the absence of domestic abuse.

The re-write of the Best Interest Factors was focused through the lens of meeting children’s diverse needs in order to promote their healthy development. In this way, the new factors represent a child-centered approach. A guiding principle for the group’s work was that children need safe, stable and nurturing relationships with both parents.

Language was added that says “the court shall consider both parents as having the capacity to develop and sustain nurturing relationships with their children unless there are substantial reasons to believe otherwise. In assessing whether parents are capable of sustaining nurturing relationships with their children, the court shall recognize that there are many ways that parents can respond to a child’s needs with sensitivity and provide the child love and guidance, and these may differ between parents and among cultures.”

The redirection of decision-making to the unique needs of the child, along with statutory changes last year that permitted reserving a determination of changes in parenting time to correspond to the child’s changing developmental needs, will hopefully result in a reduction of the conflict between parents as they decide parenting time. This conflict has been exacerbated by the perception that the issue of custody was a win-lose contest between parents, and also by the perception that the temporary orders served as a template for the final orders. The current changes seek to encourage processes that support the substantial involvement of both parents in a child’s life, assuming the child’s safety, well-being, and healthy development are continually addressed.

Following is a look at each of the 12 new factors. Having evolved out of a focus on the healthy development of the child, there is no order of importance in the factors. In fact, statutory language specifically requires consideration that the factors may be interrelated. And, as before, the court must make findings on each factor and not use one to the exclusion of all others.

**1. Physical, emotional, cultural and spiritual needs of a child.** This first factor addresses “a child’s physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on

the child's needs and development." This factor emphasizes the focus to be used in evaluating the proposed custody and parenting time arrangement: the overall needs of the child.

**2. Special medical, mental health or educational needs of a child.** The second factor considers "any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services." This is a new factor, alerting the court to unique needs that may be present for the child and including them in the consideration of parenting arrangements.

**3. Reasonable preference of a child.** This third factor clarifies "the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference." This factor adds more than age to the consideration of preference of the child; there needs to be an ability and maturity to give an opinion not influenced by another.

**4. Domestic abuse.** The fourth factor involves "whether domestic abuse, as defined [in statute], has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs." This calls for a more complex and nuanced analysis of domestic violence, that explores not only whether domestic abuse has occurred but the "nature and context" of that abuse. The factor requires a more detailed analysis that clarifies beyond "the impact on the child" of domestic abuse to the impact of that abuse on parenting, on the non-abusive parent, and "the child's safety, well-being and developmental needs."

**5. Physical, mental health or chemical health issues of a parent.** The fifth factor focuses on "any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs." This factor adds chemical health, including alcohol and drug abuse, to any physical and mental health concerns regarding parents. And, again, it connects these issues to their effect on the child's safety and healthy development.

**6. History and nature of care.** The sixth factor speaks to "the history and nature of each parent's participation in providing care for the child." This factor allows a descriptive consideration of each parent's prior involvement in caregiving. This is not intended to result in a comparison between parents but to provide the background of how the child's needs have been met previously.

**7. Ability of parent to reliably meet the needs of a child going forward.** The seventh factor considers "the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time." This factor expands on the previous one to provide a prospective examination of how the child's needs may be met going forward. The intention is to look carefully at whether and how each parent can now responsibly and reliably meet the child's needs and provide a consistent presence for the child into the future.

**8. Effect on a child of changes to home, school and community.** The eighth factor emphasizes "the effect on the child's well-being and development of changes to home, school, and community." This replaces the more static analysis of the child's adjustment to home, school, and community with a description of the effects on the well-being and development of the child of significant changes to these important aspects of a child's life.

**9. Effect on significant relationships of a child.** The ninth factor involves “the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child’s life.” The new wording represents an effort to understand how each parent’s proposal affects important relationships rather than just describing those relationships.

**10. Benefit to a child in maximizing time or detriment to a child in limiting time.** The tenth factor considers “the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent.” This is an entirely new provision that is not reflecting a presumption of equal parenting time. Instead, it emphasizes the appropriately substantial participation of both parents in a way that benefits the child on a case by case basis.

**11. Disposition of parents to support relationship with the other.** The eleventh factor continues the provision that “except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to support the child’s relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent.”

**12. Ability of parents to cooperate in rearing their child.** The twelfth factor includes “the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.” This factor focuses specifically on the willingness and skill of the parents to work together in sharing parenting. It mentions some key components of sharing information and protecting the child from parental conflict. And it takes note of whether the parents can utilize dispute resolution methods for conflicts over major decisions regarding the child’s life.

In conclusion, the collaborative work of the Minnesota Child Custody Dialogue Group sought family law changes which, among other things, would make less contentious the difficult task of determining parenting time arrangements. The revisions to the Best Interest Factors focus parents on their mutual, shared concern for the healthy development and well-being of their children, and honor the importance of loving bonds and safe, stable and nurturing relationships with both parents.